

Are Estate Agents and Body Corporates Debt Collectors

Are estate agents who collect rentals for landlords and body corporate managers who collect levies for body corporates, debt collectors as described in the Debt Collectors Act?

A recent decision of the Council of Debt Collectors has raised this matter and has concluded that the answer in certain circumstances is "yes".

As of February 2003 the Debt Collectors Act number 114 of 1998 came into operation. The Act provides that no person may carry on the business of debt collector unless he has been duly registered with the Council for Debt Collectors established in terms of the Act. Any person who violates this law will be committing a criminal act and can be sent to jail. A debt collector is defined as any person, other than an attorney or a party to a factoring arrangement, who for reward collects debt owed to another on the latter's behalf. The Act and/or the regulations created in terms of the Act prescribe certain controls over the actions of debt collectors and also the amounts which they may charge debtors.

Neither the term "debt" nor the term "collect" is defined in the Act so one looks to the ordinary dictionary definitions. The Oxford English dictionary defines debt as "a sum of money owed" and defines the verb collect to mean "bringing or gathering things together or to fetch someone or something."

Are rentals and levies therefore "debts"? Once the rental/levy becomes due and payable it would be fair to describe it as a debt. Both after all constitute money owed by the tenant to the landlord or by the owner of a sectional title property to the body corporate.

Can an agent be said to be "collecting" debts by receiving or receipting monies from tenants and owners of property. I don't think so. I think there is a difference between the concepts of merely receipting money and the deliberate act of collecting money

I think it is therefore acceptable for estate agents and or body corporate managers to account to tenants and property owners on a monthly basis and to receive and receipt payments tendered for such accounts. If the tenant/owner does not pay the account when it is due it will be acceptable for the agent/manager to send a reminder statement and to receive and receipt payments tendered for such reminder accounts.

What the Act seeks to control is in my opinion the "next logical step" namely some deliberate action to force or encourage the tenant or property owner to pay the outstanding amounts. Such steps (whatever they might be) may not be taken by an estate agent or a body corporate manager without registering as a debt collector in terms of the Act. If the agent/manager prefers not to register in terms of the Act then the matter must at that point be handed over to an attorney or a registered debt collector.

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